

☐ Individual appearing without attorney
☒ Attorney for: Debtor and Debtor-in-Possession

NOTICE OF SALE OF ESTATE PROPERTY

Location: 255 East Temple Street, Courtroom 1675, Los Angeles, California 90012

F 6004-2.NOTICE.SALE

Overbid procedure (*if any*):

N/A

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

Date: September 17, 2019

Time: 11:00 a.m.

Place: Courtroom 1675

255 East Temple Street

Los Angeles, California 90012

Contact person for potential bidders (*include name, address, telephone, fax and/or email address*):

N/A

Date: 09/12/2019

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JULIET Y. OH (SBN 211414)
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Attorneys for Chapter 11 Debtor and Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

ZACKY & SONS POULTRY, LLC, a
California limited liability company,

Debtor and Debtor in Possession.

Case No.: 2:18-bk-23361-RK

Chapter 11

**NOTICE OF EMERGENCY MOTION FOR
ENTRY OF AN ORDER: (1) APPROVING
SETTLEMENT AGREEMENT; (2)
APPROVING THE SALE OF REAL
PROPERTY TO FOSTER FARMS, LLC
FREE AND CLEAR OF ALL LIENS,
CLAIMS, ENCUMBRANCES AND
INTERESTS, OTHER THAN PERMITTED
ENCUMBRANCES; (3) VACATING A
PRIOR SALE ORDER REGARDING THE
SUBJECT REAL PROPERTY; AND
(4) GRANTING RELATED RELIEF**

Hearing:

Date: September 17, 2019

Time: 11:00 a.m.

Place: Courtroom 1675

255 East Temple Street

Los Angeles, California 90012

1 **TO THE HONORABLE ROBERT N. KWAN, UNITED STATES BANKRUPTCY**
2 **JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA, UNITED STATES**
3 **TRUSTEE, THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, ALL**
4 **CREDITORS, PARTIES REQUESTING SPECIAL NOTICE, AND OTHER PARTIES IN**
5 **INTEREST:**

6 **PLEASE TAKE NOTICE** that a hearing has been set on September 17, 2019 at 11:00
7 a.m. for the Court to consider the emergency motion (the “Motion”) filed by Zacky & Sons
8 Poultry, LLC, the debtor and debtor-in-possession in the above-captioned chapter 11 bankruptcy
9 case (the “Debtor”), pursuant to Sections 105(a) and 363(b), (f) and (m) of Title 11 of the United
10 States Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”),¹ Rules 2002, 6004, and 9019 of the
11 Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2081-1, 6004-1,
12 9013-1, and 9075-1 of the Local Bankruptcy Rules (the “LBR”), for the entry of an order (the
13 “Settlement/Sale Order”):

14 (1) approving that certain *Settlement Agreement and Mutual Release* (the “Settlement
15 Agreement”), in substantially the form attached as Exhibit “1” to the Declaration
16 of Lillian D. Zacky annexed to the Motion (the “Zacky Declaration”), which has
17 been entered into by and among the Debtor, secured creditor Great Rock Capital
18 Partners Management, LLC (“Great Rock”), secured creditor GemCap Lending I,
19 LLC (“GemCap”), and the Official Committee of Unsecured Creditors appointed
20 in the Debtor’s chapter 11 bankruptcy case (the “Creditors’ Committee,” and
21 collectively with the Debtor, Great Rock, and GemCap, the “Parties”);

22 (2) approving the sale of nineteen real property assets (collectively, the “19
23 Properties”) to Foster Farms, LLC (“Purchaser”), which 19 Properties are
24 comprised of eight (8) real properties owned by the Debtor (the “8 Debtor
25 Properties”) and eleven (11) real properties owned by affiliates of the Debtor that

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28 ¹ Unless otherwise stated herein, all Section references herein are to the Bankruptcy Code.

are not debtors in bankruptcy² (the “11 Non-Debtor Properties”), pursuant to (i) the asset purchase agreement between Purchaser and the Debtor in mutually agreed form and the material terms of which are summarized in the Motion (the “Debtor APA”)³, and (ii) the asset purchase agreement between Purchaser and the non-debtor affiliates of the Debtor (collectively, the “Non-Debtor Affiliates”) who own the 11 Non-Debtor Properties in mutually agreed form and the material terms of which are summarized in the Motion (the “Non-Debtor APA,” and together with the Debtor APA, the “APAs”), with the sale of the 8 Debtor Properties to be free and clear of all liens, claims, encumbrances and other interests, other than Permitted Encumbrances (as defined in the Debtor APA), and with a finding that Purchaser is a good faith purchaser entitled to the protections set forth in Bankruptcy Code Section 363(m) with respect to the 8 Debtor Properties;

- (3) vacating the prior sale order entered by the Court on July 3, 2019 [Doc. No. 311] (the “19 Properties Sale Order”) approving the sale of the 8 Debtor Properties to Great Rock based on its collective credit bid in the amount of \$21,550,000 for all 19 Properties (the “Great Rock Sale”), which Great Rock Sale has not closed; and
- (4) waiving the 14-day stay period set forth in Bankruptcy Rule 6004(h) and granting related relief.

² The Debtor recognizes that the Court may lack jurisdiction to approve the sale of the 11 Non-Debtor Properties to Purchaser, and the Debtor is not seeking approval of such sale by way of the Motion and the proposed Settlement/Sale Order thereon. However, since (1) the Settlement Agreement contemplates and requires the sale of all 19 Properties to Purchaser and (2) the Settlement Agreement and the APAs are interdependent, the Debtor has described in the Motion the proposed sale transaction for all 19 Properties, which the Debtor believes must be viewed and considered as a whole.

³ The Debtor APA and Non-Debtor APA are in the process of being finalized and will be submitted to the Court as soon as practicable.

1 The full bases for the Motion are set forth in detailed in the Motion and the Memorandum of
2 Points and Authorities annexed thereto.

3 Briefly, the Debtor believes that the Settlement Agreement and APAs provide numerous
4 material benefits to the Debtor's bankruptcy estate and represent a marked improvement from
5 the results that would be obtained if the Great Rock Sale were to be consummated. The 19
6 Properties which are now proposed to be sold to Purchaser are as follows:

7
8 8 Debtor Properties:

- 19010 & 19012 S. Brawley, Riverdale, CA [APN 053-090-37S]
- 43501 & 43473 6th Avenue, Corcoran, CA [APN 046-270-004 & 046-270-035]
- 590 W. Kamm Avenue, Caruthers, CA [APN 043-050-15S]
- 16395 19th Avenue, Lemoore, CA [APN 024-170-020]
- 19744 Kent Avenue, Lemoore, CA [APN 024-170-073]
- 17388 & 17432 18th Avenue, Lemoore, CA [APN 026-060-007]
- 8351 S. McMullin Grade, Fresno, CA [APN 035-061-08S]
- 1486 S. Industrial Way, Kerman, CA [APN 023-060-44S]

11 11 Non-Debtor Properties:

- 20115 Del Oro Road, Apple Valley, CA [APN 434-191-33]
- 7915 Deep Creek Road, Apple Valley, CA [APN 433-061-02 & 433-061-07]
- 18606 Lords Road, Helendale, CA [APN 466-041-18]
- 5556 S. Placer Avenue, Kerman, CA [APN 030-040-57]
- 9507 Niles Avenue, Corcoran, CA [APN 044-030-036]
- 8479 S. Madera Avenue, unincorporated area of Fresno County, CA [APN 030-070-49S]
- 5546 S. Placer Avenue, Kerman, CA [APN 030-040-62]
- 20739 W. American Avenue, Kerman, CA [APN 030-040-64]
- 5606 E. Davis Avenue, Laton, CA [APN 056-020-50S]
- 25765 Whitesbridge Avenue, Kerman, CA [APN 015-171-29S]
- 15956 S. East Avenue, Caruthers, CA [APN 042-042-18S]

23
24 As previously represented to the Court and discussed in the Motion, the 19 Properties that are
25 owned by the Debtor and its Non-Debtor Affiliates were extensively marketed and were the
26 subject of an initial auction as well as a subsequent reopened auction. At the conclusion of the
27 reopened auction for the 19 Properties, the Debtor concluded that Great Rock's credit bid of
28 \$21,550,000 for the 19 Properties was the highest and best offer for such assets, and the Court

1 approved such credit bid pursuant to the 19 Properties Sale Order approving the Great Rock Sale.
2 The Great Rock Sale has not closed. On July 16, 2019, GemCap filed a motion seeking to alter
3 or amend the 19 Properties Sale Order or, in the alternative, seeking relief from the 19 Properties
4 Sale Order (the “GemCap Motion”). GemCap has advised the Debtor that, in the event the Court
5 denies the relief requested in the GemCap Motion, GemCap intends to appeal the 19 Properties
6 Sale Order and the Great Rock Sale approved thereunder unless the various disputes among the
7 Parties are resolved in accordance with the terms of the Settlement Agreement and the proposed
8 sales of the 19 Properties to Purchaser, in accordance with the APAs, are approved as requested
9 by the Motion.

10 Under the Great Rock Sale, the Debtor’s estate would potentially realize up to
11 \$21,550,000 in consideration in the form of a credit bid from Great Rock for the 19 Properties,
12 which consideration would then be applied to reduce the secured claim of Great Rock. However,
13 the consummation of the Great Rock Sale could well be delayed by an appeal of the 19
14 Properties Sale Order (which GemCap indicated it intended to pursue) and could potentially be
15 jeopardized altogether if GemCap were to prevail on such appeal. On the other hand, the
16 Settlement Agreement negotiated and entered into by the Parties (*i.e.*, the Debtor, Great Rock,
17 GemCap, and the Creditors’ Committee) will, among other things, resolve GemCap’s opposition
18 to the Great Rock Sale (and potential appeal of the 19 Properties Sale Order) and pave the way
19 for a prompt consensual sale of the 19 Properties to Purchaser in accordance with the terms of
20 the APAs. Most significantly, the terms of the Settlement Agreement and the APAs provide for
21 the sale of the 19 Properties to Purchaser for an aggregate cash purchase price of \$31,000,000
22 (the “Foster Farms Purchase Price”).⁴ In short, the various constituencies of the Debtor’s estate
23

24
25 ⁴ The Foster Farms Purchase Price may potentially be subject to reduction if one or more of the
26 19 Properties is not ultimately sold in connection with the proposed sale transaction as a result of
27 the partial termination of the APAs to exclude such property or properties in accordance with the
28 termination provisions of the APAs or as a result of a bifurcated closing due to certain Non-
Debtor Affiliates not being in good corporate standing on the date of the initial sale closing.

1 will receive \$9,450,000 more in consideration from the sale of the 19 Properties to Purchaser
2 than they would receive under the Great Rock Sale.

3 Further, under the Great Rock Sale, the Debtor's estate would not receive any net cash
4 consideration, because the amount of Great Rock's credit bid was less than the amount of Great
5 Rock's secured claim. In contrast, under the Settlement Agreement, the Debtor's estate will
6 receive (a) cash in the sum of \$250,000 from the Foster Farms Purchase Price as a professional
7 fee carve-out from Great Rock's and GemCap's collateral, to be used solely to pay the fees and
8 expenses of current bankruptcy counsel and current special labor counsel employed by the Debtor
9 and current bankruptcy counsel employed by the Creditors' Committee as allowed by the Court
10 after notice and a hearing, and (b) cash in an additional sum of \$250,000 from the sale of a
11 Debtor-owned real property asset located at 1111 Navy Drive, Stockton, California [APN 163-
12 260-07] (the "Stockton Property"), which is not part of the 19 Properties proposed to be sold to
13 Purchaser, with such funds to be free and clear of Great Rock's and GemCap's liens and to be
14 used for the benefit of the Debtor's creditors other than Great Rock and GemCap. In addition, the
15 Debtor will have an opportunity to share in potential recoveries from the Debtor's insurance
16 policy issued by Darwin Select Insurance Company, Policy No. 0309-9815 (the "Insurance
17 Policy"), in accordance with the terms set forth in Paragraph 5.2 of the Settlement Agreement.

18 In addition to the foregoing estate benefits, the Settlement Agreement also (i) resolves all
19 other disputes and claims by and among the Parties pertaining to (a) the allocation and
20 disbursement of the proceeds from the sale of the 19 Properties to Purchaser, and (b) GemCap's
21 assertion that it holds a first priority perfected security interest against the Insurance Policy and
22 any recoveries therefrom; (ii) provides a means for satisfying and eliminating GemCap's secured
23 claim by way of a payment from the proceeds of the sale of the 19 Properties to Purchaser and
24 potential recoveries from the Insurance Policy (in accordance with the terms set forth in the
25 Settlement Agreement); (iii) provides a means for satisfying and eliminating Great Rock's
26 secured claim by way of a payment from the proceeds of the sale of the 19 Properties to
27 Purchaser, a payment from the proceeds from the sale of the Stockton Property, a payment from
28 the OK Produce Sale Proceeds (as defined in the Motion) and title to the 3 Industrial Properties

(as defined in the Motion), and (iv) resolves all pending litigation by and among the Parties, including, without limitation, that certain adversary proceeding pending before this Court bearing the case number 2:19-ap-01140-RK which was initiated by GemCap against Great Rock and pursuant to which GemCap seeks to equitably subordinate Great Rock's claim.

PLEASE TAKE FURTHER NOTICE that this Motion is based on Sections 105(a) and 363(b), (f) and (m) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 9019, and LBR 2081-1, 6004-1, 9013-1, and 9075-1, this Notice of the Motion, the Motion and the supporting Memorandum of Points and Authorities and Zacky Declaration annexed thereto, all papers filed in support of this Motion, the entire record of the Debtor's bankruptcy case, the arguments and statements of counsel made at the hearing on this Motion, and other admissible evidence properly brought before the Court.

PLEASE TAKE FURTHER NOTICE that any request for a copy of the Motion, the Zacky Declaration and any exhibits thereto, and any other pleadings or documents related thereto will be promptly provided upon written request to Debtor's bankruptcy counsel, Levene, Neale, Bender, Yoo & Brill L.L.P., 10250 Constellation Blvd., Suite 1700, Los Angeles, California 90067, Attention: Juliet Y. Oh, Tel: (310) 229-1234, Fax: (310) 229-1244, Email: JYO@LNBYB.com.

PLEASE TAKE FURTHER NOTICE that any oppositions to the Motion may be made up to or at the time of the hearing on the Motion.

WHEREFORE, the Debtor respectfully requests that the Court enter the Settlement/Sale Order, in a form reasonably acceptable to all of the Parties and Purchaser:

- (1) granting the Motion;
- (2) approving the Settlement Agreement and authorizing the Debtor to take such actions reasonably necessary to implement the terms of the Settlement Agreement;
- (3) vacating the 19 Properties Sale Order;
- (4) approving the sale of the 19 Properties to Purchaser, pursuant to the terms and conditions set forth in the APAs, with the sale of the 8 Debtor Properties to be free and clear of all liens, claims, encumbrances and other interests, other than Permitted Encumbrances (as

1 defined in the Debtor APA), and with a finding that Purchaser is a good faith purchaser entitled
2 to the protections set forth in Bankruptcy Code Section 363(m) with respect to the 8 Debtor
3 Properties;

4 (5) waiving the 14-day stay period set forth in Bankruptcy Rule 6004(h); and

5 (6) granting such other and further relief as is warranted under the circumstances.

6 Dated: September 12, 2019

ZACKY & SONS POULTRY, LLC

7 By: /s/ Juliet Y. Oh

8 RON BENDER

JULIET Y. OH

9 TODD M. ARNOLD

10 LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

11 Attorneys for Chapter 11 Debtor and Debtor-in-Possession
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled **NOTICE OF SALE OF ESTATE PROPERTY** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **September 12, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Todd M Arnold tma@lnbyb.com
- Jessica L Bagdanov jbagdanov@bg.law, ecf@bg.law
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- Bruce J Zabarauskas bruce.zabarauskas@tklaw.com, wanda.sneed@tklaw.com

2. SERVED BY UNITED STATES MAIL: On **September 12, 2019**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service List served by U.S. Mail attached

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **September 12, 2019**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Served by Personal Delivery

Hon. Robert N. Kwan
United States Bankruptcy Court
Edward R. Roybal Federal Building
255 E. Temple Street, Suite 1682
Los Angeles, CA 90012

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

September 12, 2019
Date

Stephanie Reichert
Type Name

/s/ Stephanie Reichert
Signature